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Mohd Zulhazi Mohd Zulkafli v Suruhanjaya Pasukan Polis Diraja Malaysia & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO P-01–452–10 OF 2012
ABDUL MALIK ISHAK, LINTON ALBERT AND UMI KALTHUM JJCA
16 JULY 2014

Civil Procedure — Judicial review — Appeal against — Appeal against decision of High Court — Applicant found guilty of charge of bribery while holding office as Ketua Polis Balai Kuantan and dismissed — Application for judicial review at High Court dismissed — Non-calling of complainant — Whether detrimental to investigation — Whether breach of principles of natural justice in favour of applicant

The appellant ('the applicant') was informed by the first respondent that disciplinary proceedings with intention to dismiss or demote him in rank was being commenced in respect of three charges of disciplinary offence allegedly committed by him while he was the Ketua Polis Balai Kuantan, Pahang. After the applicant submitted his letter of representation, the first respondent informed the applicant that he had been found guilty of all three charges of misconduct. With respect to the first charge, the applicant was to be dismissed while the punishment meted out in respect of the second and third charges was a warning. The present appeal arose from the judicial review application in the High Court and this appeal concerned the first charge only where it was alleged that the applicant had received a bribe of RM5,000 from one Alex during an inspection to desist from taking criminal action against the latter and the amount in question was handed to the applicant by Corporal Abdul Rahman ('Abdul Rahman'). In dismissing the applicant's judicial review application with costs, the High Court judge accepted the first respondent's explanation that the applicant was not restricted in any way in making his representation against the first charge, even though the statement made by Alex to the Suruhanjaya Pencegahan Rasuah Malaysia ('SPRM') implicating the applicant was not made available to the applicant. The judge further decided that there was no condonation as there was no evidence which showed that a positive and conscientious act to forgive or overlook a known wrongdoing or offence done by the first respondent in the form of the first charge by the police authorities. Furthermore, the 'delay' in commencing the disciplinary proceedings only in 2010 in respect of the misconduct of the applicant which occurred in 2005, did not amount to any procedural impropriety. The issues that arose for the court's determination were whether the non-supply of the statement made by Alex was breach of the principles of natural justice in favour of the applicant; and the act of condonation by the respondents when the applicant was promoted to

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assistant police commissioner after the applicant was alleged to be involved in taking bribe through a third party.

Held, allowing the appeal:

(1) It was erroneous on the part of the deponent to have averred that the SPRM was unable to produce the statement due to the restrictions imposed by sub-s 29(4) of the Malaysian Anti-Corruption Commission Act 2009. As can be seen from the six categories of the Act, there was no real effort being made to obtain Alex's statement from the SPRM. This was a material breach of natural justice since Alex was the complainant and the applicant was charged with a disciplinary offence of receiving a bribe from Alex (see para 15).

(2) There was a clear breach of natural justice committed by the first respondent. In the first charge, the applicant was alleged to have received RM5,000 bribery from one Alex. In order for the applicant to prepare an effective defence against this charge, the applicant needed to have sight of the allegation made against him and to have the opportunity to rebut each and every statement that might implicate him in the offence (see para 16).

(3) There was a delay of five years since the alleged incident and the date when the applicant was given the show cause letter. Although delay per se was not a ground for holding that the disciplinary action should be held null and void, the fact remained that during this period the applicant was promoted as assistant superintendent of police and even considered for promotion for the post of deputy superintendent of police (see para 19).

(4) If the judge had not misdirected himself he would have agreed with the applicant that there was condonation on the part of the police authorities and that therefore it was wrong for the first respondent to have found him guilty of the disciplinary offence in the first charge. The judge had failed to appreciate the said facts and had misdirected himself (see para 20).

[Bahasa Malaysia summary

Perayu ('pemohon') diberitahu oleh responden pertama bahawa prosiding tatatertib dengan niat untuk memecat atau menurunkan pangkatnya bermula berkaitan tiga tuduhan kesalahan tatatertib yang didakwa dilakukan olehnya semasa dia adalah Ketua Polis Balai Kuantan, Pahang. Selepas pemohon menyerahkan surat representasinya, responden pertama memberitahu pemohon bahawa dia didapati bersalah terhadap kesemua ketiga-tiga tuduhan salah laku. Berkenaan tuduhan pertama, pemohon akan dipecat manakala hukuman yang dijatuhkan berkenaan tuduhan kedua dan ketiga adalah amaran. Rayuan ini berbangkit daripada permohonan semakan kehakiman di Mahkamah Tinggi dan rayuan ini adalah berkaitan tuduhan pertama hanya di mana ia didakwa bahawa pemohon telah menerima rasuah sebanyak RM5,000

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daripada seorang yang bernama Alex semasa pemeriksaan untuk berhenti daripada mengambil tindakan jenayah terhadap Alex dan jumlah yang dipersoalkan diserahkan kepada pemohon oleh Koperal Abdul Rahman ('Abdul Rahman'). Dalam menolak permohonan semakan kehakiman pemohon dengan kos, hakim Mahkamah Tinggi menerima penjelasan responden pertama bahawa perayu tidak dihalang dalam apa cara sekali dalam membuat representasinya terhadap tuduhan pertama, walaupun pernyataan yang dibuat oleh Alex kepada Suruhanjaya Pencegahan Rasuah Malaysia ('SPRM') membabitkan perayu tetapi tidak diberikan kepada pemohon. Hakim selanjutnya memutuskan bahawa tidak terdapat pengabaian memandangkan tidak terdapat keterangan yang menunjukkan bahawa tindakan positif dan berhemat untuk memaafkan atau terlepas pandang salah laku yang diketahui atau kesalahan yang dilakukan oleh responden pertama dalam bentuk tuduhan pertama oleh pihak berkuasa polis. Selanjutnya, 'delay' dalam memulakan prosiding tatatertib hanya pada tahun 2010 berkenaan salah laku pemohon yang berlaku pada tahun 2005, tidak terjumlah kepada apa-apa prosedur yang salah. Isu yang berbangkit untuk penentuan mahkamah adalah sama ada ketidakmasukkan pernyataan yang dibuat oleh Alex adalah kemungkiran prinsip keadilan asasi memihak pemohon; dan tindakan pengabaian oleh responden apabila pemohon dinaikkan pangkat kepada timbalan pesuruhjaya polis selepas pemohon didakwa terlibat dalam perbuatan rasuah melalui pihak ketiga.

Diputuskan, menolak rayuan:

(1) Adalah silap oleh pihak deponen untuk berhujah bahawa SPRM tidak dapat mengemukakan pernyataan akibat kepada sekatan yang dikenakan oleh sub-s 29(4) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009. Seperti yang dapat dilihat daripada keenam-enam kategori Akta, tidak terdapat usaha yang betul yang dibuat untuk mendapatkan pernyataan Alex daripada SPRM. Ini adalah kemungkiran material keadilan asasi memandangkan Alex adalah pengadu dan pemohon telah dituduh dengan kesalahan tatatertib menerima rasuah daripada Alex (lihat perenggan 15).

(2) Terdapat kemungkiran jelas keadilan asasi yang dilakukan oleh responden pertama. Dalam tuduhan pertama, pemohon didakwa menerima rasuah sebanyak RM5,000 daripada Alex. Untuk pemohon menyediakan pembelaan efektif terhadap tuduhan tersebut, pemohon perlu melihat tuduhan yang dibuat terhadapnya dan untuk mempunyai peluang untuk mematahkan setiap pernyataan yang mungkin membabitkan dia di dalam kesalahan (lihat perenggan 16).

(3) Terdapat kelewatan selama lima tahun semenjak kejadian didakwa dan tarikh apabila pemohon diberi untuk menunjukkan surat sebab. Walaupun kelewatan itu sendiri adalah bukan alasan untuk memutuskan

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bahawa tindakan tatatertib patut diputuskan batal dan tak sah, fakta kekal bahawa semasa tempoh ini pemohon dinaikkan pangkat sebagai penolong superintenden polis dan juga dipertimbangkan untuk jawatan timbalan superintenden polis (lihat perenggan 19).

(4) Jika hakim tidak tersalah arah dirinya beliau akan bersetuju dengan pemohon bahawa terdapat pembiaran oleh pihak berkuasa polis dan bahawa oleh itu adalah salah untuk responden pertama mendapati dia bersalah terhadap kesalahan tatatertib dalam tuduhan pertama. Hakim juga gagal untuk menilai fakta tersebut dan telah salah arah dirinya (lihat perenggan 20).]

Notes

For a case on appeal against, see 2(1) *Mallal's Digest* (4th Ed, 2014 Reissue) para 5317.

Cases referred to

Azman bin Abdullah v Ketua Polis Negara [1997] 1 MLJ 263; [1997] 1 CLJ 257, CA (refd)

B Surinder Singh Kanda v The Government of The Federation Of Malaya [1962] 1 MLJ 169, PC (refd)

Rohana bte Ariffin & Anor v Universiti Sains Malaysia [1989] 1 MLJ 487, HC (refd)

Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor [1990] 3 MLJ 364, SC (refd)

Legislation referred to

Malaysian Anti-Corruption Commission Act 2009 s 29(1), (4)

Appeal from: Civil Suit No 25–301 of 2012 (High Court, Pulau Pinang)

Mohd Ismail Mohamed (Ismail Khoo & Associates) for the appellant.
Effendi Nazila Abdullah (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Umi Kalthum JCA (delivering judgment of the court):

[1] This appeal by the appellant had arisen out of the hearing of the appellant's application for judicial review wherein the High Court had dismissed the application for an order of certiorari to quash his dismissal from the Royal Malaysian Police Force on 16 December 2012 by the first respondent.

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FACTS

[2] The facts of the application as stated by the learned High Court judge in His Lordship's grounds of judgment dated 15 January 2013 were not disputed by the appellant and respondents and are hereby reproduced as follows:

(a) by a letter of 31 May 2010 the applicant had been informed by the first respondent that disciplinary proceedings with intention to dismiss or demote him in rank was being commenced in respect of three charges of disciplinary offence allegedly committed by him in June and August 2005 while he was the Ketua Polis Balai Kuantan, Pahang;

(b) the applicant was directed to submit written representations to show cause why disciplinary action or punishment should not be taken against him; in other words to state the grounds 3 upon which the applicant would rely to exculpate himself of the charges brought against him;

(c) after obtaining extensions of time, (during which the applicant was furnished with certain documents he had requested for), the applicant submitted his letter of representation dated 26 May 2011. This letter of representation was fifteen pages in length with legal submissions and twelve exhibits;

(d) by letter of 16 December 2011, the first respondent informed the applicant that he had been found guilty of all three charges of misconduct. With respect to the first charge, the applicant was to be dismissed (buang kerja) while the punishment meted out in respect of the second and third charges was 'amaran' (warning).

(e) it was only against the finding and punishment related to the first charge, that this judicial review was applied for. The first charge of misconduct brought against the applicant was in the following terms:

> PERTUDUHAN PERTAMA
>
> Bahawa kamu Penolong Penguasa Polis G/12497 Mohd Zulhazi bin Mohd Zulkafli sebagai Pegawai Awam dalam Pasukan Polis Diraja Malaysia pada 23 Jun 2005 semasa bertugas sebagai Ketua Polis Balai Kuantan, Pahang telah menerima wang sogokan RM5,000 daripada penama Alex @ Lai Foo Hoo supaya tidak diambil tindakan terhadapanya semasa pemeriksaan dijalankan di Premis No 19, Lorong 35, Taman Tas Ria, Kuantan yang mana wang tersebut diserahkan kepada kamu melalui Koperal 86697 Abdul Rahman bin Abdul Kadir. Perbuatan kamu diertikan sebagai membelakangkan tugas awam demi kepentingan peribadi, maka dengan hal yang demikian, kamu telah melanggar tatakelakuan di bawah Peraturan 4(2)(a) Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) (Pindaan) 2002 yang berbunyi seperti berikut:

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A 4(2) seseorang Pegawai tidak boleh:

(f) Membelakangkan tugas awamnya demi kepentingan peribadinya.

Jika kamu didapati bersalah, kamu boleh dihukum mengikut Peraturan 38, Peraturan-Peraturan Pegawai Awam (Kelakuan Dan Tataterbib) (Pindaan) B 2002.

(a) the substance of the first charge or allegation against the applicant was that the applicant had on 23 June 2005 received a bribe (wang sogokan) of RM5,000.00 from one Alex or Lai Foo Hoo during an inspection at C premises No 19, Lorong 35, Taman Tas Ria, Kuantan, to desist from taking criminal action against the said Alex @ Lai Foo Hoo ('Alex') and the amount in question was handed to the applicant by Koperal 86697 Abdul Rahman bin Abdul Kadir; and

D (b) in June 2005, the applicant held the position of Chief Inspector in the Police Force and effective from 1 July 2005 he had been promoted to Assistant Superintendent of Police (ASP).

JUDICIAL REVIEW

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[3] In dismissing the appellant's judicial review application with costs, the learned High Court judge had accepted the first respondent's explanation that the appellant was not restricted in any way in making his representation against the first charge, even though the statement made by one 'Alex' to the F Suruhanjaya Pencegahan Rasuah Malaysia ('SPRM') implicating the appellant was not made available to the appellant. The learned judge further decided that there was no condonation as there was no evidence which showed that a positive and conscientious act to forgive or overlook a known wrongdoing or offence done by the first respondent in the form of the first charge by the police G authorities. Furthermore, the 'delay' in commencing the disciplinary proceedings only in 2010 in respect of the misconduct of the applicant which occurred in 2005, did not amount to any procedural impropriety.

THE APPEAL

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[4] At this stage we need to remind ourselves of the power of the court in judicial review involving disciplinary proceedings as stated in the case of *Azman bin Abdullah v Ketua Polis Negara* [1997] 1 MLJ 263; [1997] 1 CLJ 257 (CA) Abdul Malek Ahmad JCA (as he then was) stated that, at p 276 I (MLJ); p 273 (CLJ):

> It is settled law that in judicial review by way of a certiorari application, the Court is only concerned with the decision-making process and not with the decision. It is not an appeal from the decision made but a review of the manner in which it was made and it is not the Court's function to consider whether on the merits of the facts

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of the case, the said decision was fair and reasonable. A

[5] With the above principles in mind as guidance, we proceeded to consider the two issues raised by learned counsel for the appellant for our determination. First, the non-supply of material document, that is, the statement made by the complainant named Alex @ Lai Foo Hoo ('Alex'), by the first respondent which had made it difficult for the appellant to defend himself in respect of the first charge in breach of the principles of natural justice in favour of the appellant. Second, the act of condonation by the respondents when the appellant was promoted to assistant police commissioner after the appellant was alleged to be involved in taking bribe through a third party. B C

Non-supply of document

[6] The appellant submitted that the first respondent failed to furnish the appellant with a statement made by Alex which was recorded by Chief Insp Kutty a/l Apparuky on 12 August 2005 for the purpose of making the appellant's representation in response to the first charge levelled against the appellant. According to the appellant, he received the show cause letter dated 31 May 2010 from the first respondent on 18 July 2010. On 26 July 2010, the appellant wrote a reply to the first respondent requesting for an extension of time to reply to the said show cause letter. In the same letter the appellant requested to be supplied with a few other documents including a statement made by one Alex which was recorded by Chief Insp Kutty a/l Apparuky on 12 August 2005. The first respondent in response, vide a letter dated 23 September 2010 allowed the appellant's request to inspect documents requested with a condition that the appellant was not allowed to make copies and the inspection was to be done in the presence of the supervising officer. The appellant was to reply to the show cause letter within 21 days after the inspection of documents. D E F G

[7] On 9 May 2011, the first respondent handed over a few documents to the appellant for inspection. However, despite the permission/clearance given by the first respondent vide their letter dated 23 September 2010, the statement made by Alex was still not accorded to the appellant. H

[8] However, on 26 May 2011, the appellant proceeded to write his letter of representation to the first respondent. In para 5 of the same letter, the appellant highlighted to the first respondent that he had not received the statement made by Alex. I

[9] It was the appellant's contention that the first respondent's failure to supply the statement by Alex was in breach of natural justice. The appellant was denied his right to rebut the accusation that he was involved in bribery as stated

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in the first charge. The appellant referred to the case of *Rohana bte Ariffin & Anor v Universiti Sains Malaysia* [1989] 1 MLJ 487 (HC) where it was held by Edgar Joseph Jr J (as he then was):

> It is a well-established principle of administrative law that anything that restricts or appears to restrict the defendant's ability to present his case may be held to be a breach of procedural fairness and is thereby susceptible to judicial review. In this case the disciplinary authority had refused to accede to the request of the applicants' solicitors and counsel for pre-trial discovery. This was tantamount to denying the applicants their right to make written representations. The right to be heard necessarily means the right to know the case against oneself.

[10] Reference was also made to *Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor* [1990] 3 MLJ 364 (SC) per Jemuri Serjan SCJ (as he then was) at p 368, paras G–H, left:

> The matter is not free from authorities and the law on it is well settled. We find support for this proposition in many cases. In the case of *Kanda v Government of the Federation of Malaya* Lord Denning at page 172 said:
>
> If the right to be heard is to be a real right which is worth anything, it must carry it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them ...

[11] In the case of *B Surinder Singh Kanda v The Government of The Federation of Malaya* [1962] 1 MLJ 169 (PC) per Lord Denning, it was held:

> (2) the right to be heard carries with it the right of the accused to know the case made against him, the evidence given and the statements made affecting him: and he must be given a fair opportunity to correct or contradict them. The Judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The Court will not enquire whether the evidence or representations did work to his prejudice. The court will not go into the likelihood of prejudice. The risk of it is enough. Applying these principles, applicant was not given a reasonable opportunity of being heard.

[12] The appellant in his representation letter dated 26 May 2011 had clearly stated at para 5 of the letter that he did not receive Alex's statement. The appellant further stated that, at para 7.5, without this statement he would not be able to prepare a defence to rebut the first charge. Despite this clear indication by the appellant in his letter dated 26 May 2011, the first respondent proceeded to make a decision as shown in their letter dated 16 November 2011, in which the appellant was found guilty of all three charges.

[13] Learned senior federal counsel, ('SFC') in rebuttal, submitted that there was no defect in the disciplinary proceedings carried out by the first 10

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respondent. With regard to Alex's statement, the learned SFC made reference to para 10 of the respondents' affidavit in reply (p 27, RR) where the deponent Tan Sri Mahmood bin Adam, in his capacity as the secretary of the first respondent, averred as follows:

> 10 Merujuk perenggan 5 Afidavit Pemohon, say a sesungguhnya menyatakan bahawa rakaman percakapan pengadu iaitu Alex @ Lai Foo Hoo tidak dapat dibekalkan kepada Pemohon kerana pihak Suruhanjaya Pencegahan Rasuah Malaysia Negeri Pahang tidak dapat memberikannya kerana terikat di bawah Seksyen 29(4) Akta SPRM 2009.

The point made by the SFC was that Alex's statement was made to the SPRM and not to the police and under s 29(4) of the Malaysian Anti-Corruption Commission Act 2009 ('SPRM Act'), SPRM was unable to give the appellant the said statement.

[14] Subsection 29(4) of the SPRM Act provides as follows:

> (4) A report made under subsection (1) *shall be kept secret and shall not be disclosed by any person to any person other than officers of the Commission and the Public Prosecutor until an accused person has been charged in court for an offence under this Act or any other written law in consequence of such report, unless the disclosure is made with the consent of the Public Prosecutor or an officer of the Commission of the rank of Commissioner and above* (Emphasis added.)

Subsection 29(4) envisages six situations whereby any report made to an officer of the SPRM relating to the commission of an offence under the SPRM Act under sub-s 29(1) can be disclosed to another person if they fall under any one of the six categories. They are as follows:

(a) officers of the commission;

(b) the public prosecutor;

(c) when the accused person has been charged in court for an offence under the SPRM Act in consequence of such report;

(d) when the accused person has been charged in court for an offence under any other written law in consequence of such report;

(e) the disclosure is made with the consent of the public prosecutor; and

(f) the disclosure is made with the consent of an officer of the commission of the rank of commissioner and above.

[15] We were of the view that it was erroneous on the part of the deponent to have averred that the SPRM was unable to produce the statement due to the restrictions imposed by sub-s 29(4) of the SPRM Act. As can be seen from the six categories above of persons who the statement can be disclosed to, there is no impediment to the *disclosure being made with the consent of an officer of the*

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commission of the rank of commissioners and above. We found that there was no real effort being made to obtain Alex's statement from the SPRM. We viewed this as a material breach of natural justice since Alex was the complainant and the appellant was charged with a disciplinary offence of receiving a bribe *from Alex*, albeit through Corporal Abdul Rahman bin Abdul Kadir.

[16] We therefore found merit in the submissions by learned counsel for the appellant that there was a clear breach of natural justice committed by the first respondent. In the first charge, the appellant was alleged to have received RM5,000 bribery from one Alex. The money was purportedly given to the appellant through one Corporal Abdul Rahman bin Abdul Kadir. In order for the appellant to prepare an effective defence against this charge the appellant needed to have sight of the allegation made against him and to have the opportunity to rebut each and every statement that might implicate him in the offence.

Condonation

[17] The appellant further submitted that the learned High Court judge committed an error when His Lordship failed to direct his mind to the act of condonation by the first respondent. It was the appellant's contention that he was promoted as assistant superintendent of police vide a *Borang Utusan Polis* dated 21 August 2006 (p 59 RR) and the promotion was backdated to be effective from 1 July 2005. Furthermore, the appellant was also named as one of the candidates in the interview for promotion for the post of deputy superintendent of police vide another *Borang Utusan Polis* dated 30 March 2010. Moreover, vide *Borang Utusan Polis* dated 5 April 2010 (p 108 RR), the appellant's name was not listed as one of the officers who had been dropped from the list of candidates for the interview for promotion to the post of deputy superintendent of police. These actions showed that the appellant must have been freed from any bad disciplinary records by the police authorities.

[18] The appellant submitted that the incident involving the appellant as stated in the first charge happened in 2005 and the disciplinary action taken against the appellant started on 31 May 2010, that is, five years later. Had the first respondent looked into the alleged involvement in bribery as stated in the first charge, the appellant would definitely not have been promoted in 2006 much less being considered for a further promotion to deputy superintendent of police. Furthermore, the delay in taking disciplinary action against the appellant and his promotion in 2006 had given a false indication to the appellant that he was freed from any disciplinary action.

[19] Looking at these facts there was no doubt that there was a delay of five years since the alleged incident and the date when the appellant was given the

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show cause letter. Although delay perse was not a ground for holding that the disciplinary action should be held null and void as argued by the learned SFC for the respondents, the fact remained that during this period the appellant was promoted as assistant superintendent of police and even considered for promotion for the post of deputy superintendent of police. In *Azman Abdullah v Ketua Polis Negara* Abdul Malek Ahmad JCA at p 276 (MLJ); p 273 (CLJ), held:

> ... The delay in taking action must surely, in these circumstances based on the authorities, be an act of condonation. As for punishment, however, nowhere can we find that the police disciplinary authority had acted beyond its powers but if the issue of condonation had been taken into consideration, the trial Judge's decision would surely have been the other way.

In *Azman bin Abdullah*'s case, the appellant had on 1 December 1990 applied to retire optionally on 1 December 1991. The police department had written to the Public Services Department on the matter on 26 March 1991 furnishing all the documents and stating in no uncertain terms that it was confirmed that the appellant was free from any disciplinary action. Then on 4 October 1991, the Public Services Department had replied saying that they had already approved the appellant's application on 2 August 1991. Following the disciplinary proceedings on 11 and 13 November 1991, the police department had written to the Public Services Department on 30 November 1991 to inform them that disciplinary action had been taken against the appellant and that he had been reduced in rank from Sub-inspector to Sergeant Major. It was the appellant's contention that in view of the dates in the charges levelled at him dating from 30 October 1986 to 7 March 1990 which strongly indicated considerable delay in taking action, and telling the Public Services Department earlier in the same year, namely in 1991, that there was no disciplinary proceedings against him, the respondent had either overlooked, forgiven, approved or sanctioned his wrongdoings and they were acting in bad faith when they took action against him after the appellant had made, and the police department had supported, his application for optional retirement, and after the Public Services Department had given their approval. Consequently, in condoning the offences in this manner and in imposing a punishment not commensurate with the offences, the appellant contended that the decision of the police disciplinary authority was invalid and of no effect.

[20] Based on the above facts, we were of the view that the learned High Court judge had failed to appreciate the said facts and had misdirected himself when he held that, at para 28 of his grounds of judgment (p 19 RR):

> 28 In my view, for any holding of a 'condonation' to arise, there must necessarily be evidence which indicate a positive and conscientious act to forgive or overlook a known wrongdoing or offence.

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A There was no such positive act by the Police authorities agreeing to forgive, overlook or sanction (post-facto, that is) any wrongdoing or misconduct of the applicant which constituted the substance of the first charge preferred against him.

B If the learned judge had not misdirected himself he would have agreed with the appellant, as we did, that there was condonation on the part of the police authorities and that therefore it was wrong for the first respondent to have found him guilty of the disciplinary offence in the first charge.

CONCLUSION

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[21] For the reasons stated above, we unanimously allowed the appeal with no order as to costs here and below. We also ordered the deposit be refunded to the appellant.

D *Appeal allowed.*

Reported by Afiq Mohamad Noor

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